Federal Communications Commission
Washington, D.C. 20554

In the Matter of

High Cost Universal Service Support	:	WC Docket No. 05-337
	:	
Federal-State Joint Board on Universal Service	:	CC Docket No. 96-45
	:	

COMMENTS OF THE PUBLIC UTILITIES COMMISSION OF OHIO REGARDING HIGH-COST UNIVERSAL SERVICE REFORM

BACKGROUND AND INTRODUCTION

On January 29, 2008, the Federal Communications Commission (Commission) released a series of three Notices of Proposed Rulemaking in the above mentioned dockets. These Notices addressed proposed rules and questions regarding reforming the high-cost universal service program[1], the role and funding awarded to Competitive Eligible Communications Carriers (CETCs)[2], and the merits of the use of reverse auctions in the determination of the amounts of funding to be provided to ETCs[3]. These Notices appeared in the Federal Register on March 4th, 2007. The Public Utilities Commission of Ohio (Ohio Commission) hereby submits its comments in regard to the

1 *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-22, Notice of Proposed Rulemaking, 23 FCC Rcd 1531 (2008) (Joint Board Comprehensive Reform NPRM).
2 *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-4, Notice of Proposed Rulemaking, 23 FCC Rcd 1467 (2008) (Identical Support Rule NPRM).
3 *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-5, Notice of Proposed Rulemaking, 23 FCC Rcd 1495 (2008) (Reverse Auctions NPRM).

Notice of Proposed Rulemaking regarding reform of the high-cost universal service program.

The long, and some would say difficult, history of the universal service high-cost fund is well detailed in the Notice of Proposed Rulemaking. It should be noted that the Joint Board itself has sought comments at least twice in the preparation of the Recommended Decision[4] that is the topic of this Notice.[5]

Among those earlier commenters, the Ohio Commission submitted reply comments in response to the Public Notice released by the Joint Board May 1, 2007. A brief review of the major points of those earlier comments[6] may be useful in setting a background for the Ohio Commission's comments in this round. In those comments, the Ohio Commission advocated:

- A separation between the different goals (basic service, competition, broadband) that the high-cost fund had been asked to meet.[7]
- Ending the "identical support" rule.[8]
- A need for equity in terms of the obligation to serve, and a balance between cost support, responsibility and

[4] *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No.96-45, Recommended Decision, 22 FCC Rcd 8998 (Fed.-State Jt. Bd. 2007) (2007 Recommended Decision).

[5] It is possible that the reform of the high-cost universal service fund is second only to the question of reform of intercarrier compensation in the depth, breath, and sheer volume of the comments already received and considered.

[6] *Federal-State Joint Board on Universal Service Seeks Comment On Long Term, Comprehensive High-Cost Universal Service Reform*, Reply Comments of the Public Utilities Commission of Ohio, WC Docket No. 05-337, CC Docket No 96-45, filed July 2, 2007 (Ohio July, 2007 Reply Comments).

[7] *Id* at Pg. 3 and Pgs.11 – 13.

[8] *Id* at Pgs. 3 – 6.

accountability.[9]

While the Ohio Commission's earlier comments were not completely supportive of certain items that ultimately appeared in the 2007 Recommended Decision, what the Joint Board recommended differs in significant ways from what was presented by the individual commenters to which the Ohio Commission was replying. In most cases, the Joint Board appears to have followed a course similar to that suggested by the Ohio Commission:

> The Ohio Commission believes that the best chance of success in this lies not in adopting any single proposal, but in identifying the useful features of a number of proposals, and developing a series of structures that can be individually adjusted to take into account the different, interdependent, and changing technologies and business models that make up the telecommunication industry in the United States.[10]

Given the progress of technology, competition and the telecommunications industry, and the recognized need for restructuring of the Universal Service Fund's high-cost mechanism, the Ohio Commission believes that it is an appropriate time to move forward with reform, along the lines proposed by the Joint Board.

DISCUSSION

A. Identical Support

[9] *Id* at Pgs. 6 – 8 and 10.
[10] *Id* at Pg.13.

Ohio is in agreement with the Joint Board's recommendation for elimination of the identical support rule for CETCs. CETCs have benefited from the funding in the past, and there is only limited evidence that the funding has yielded improvements in service to the rural and high cost areas.[11] This is particularly true with regard to Wireless carriers who have gained CETC status. The two studies released by Criterion Economics in June of 2007 make this abundantly clear. The first of these studies, by Nicholas Vantzelfde (Vantzelfde Study) states: "In total, there are 143.8 million people who are covered by one or more <u>unsubsidized</u> carriers in the 814 study areas where other wireless CETCs are receiving funds. <u>Unsubsidized</u> carriers cover 97.3% of the population, while <u>subsidized</u> carriers cover less than 70% of the population in these study areas." [Emphasis added][12] In other words, the wireless unsubsidized carriers provide more coverage than those wireless carriers who receive the subsidy. Additionally, according to the study, the wireless unsubsidized carriers provide service to more customers in the rural areas than do the wireless subsidized carriers.[13] Among the reasons for the disparity, the study suggests, is that the subsidized carrier may choose to provide coverage where there's high population density that may already have coverage from

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[11] This is not to indicate that all CETCs, or even all wireless CETCs, have been irresponsible with high cost funds. Rather, it points out that in most cases, the "identical support" rule has failed.

[12] *The Availability of Unsubsidized Wireless and Wireline Competition in Areas Receiving Universal Service Funds*, Criterion Economics, L.L.C. at Page 10 available at criterioneconomics.com/docs/Criterion%20CETC%20Service%20Availability%20Paper%20Final.pdf.

[13] *Id.* at Page 15.

unsubsidized carriers.[14] In short, for wireless carriers in the Criterion Economics study, the study states that the subsidy was, in the vast majority of instances, "simply wasted".[15]

In general, CETCs have enjoyed the benefit from the funds without the obligations to serve all customers (i.e. provide universal service).[16] The CETCs are free to set up service where it's economically beneficial and without regard to serving customers in the entire study area. Therefore, as a result, many CETC's do not incur the true costs of providing service in high-cost areas. Conversely, the ILEC must serve all customers throughout its service territory, including rural and high cost study areas.

Currently, the identical rule allows the CETCs to receive the same subsidy per line as the ILEC rather than a subsidy based on the CETCs own costs to provide service. The ILEC also provides interconnection to competitors, including CETCs, which allows the competitors to provide service to their customers. To the extent that the CETC is using the ILECs facilities to provide service (and perhaps need pay only TELRIC rates for those facilities), the identical support rule allows duplicative funding to multiple carriers without the expected value in return. Eliminating the identical support rule would mean that funds previously "duplicating the

[14] *Id.* at Pages 13-14.
[15] *Id.* at Page 23.
[16] Without a survey of the relevant laws and rules in all 50 states, an absolute determination with regard to this is impossible. However, it is true in Ohio, and in all states with which the Ohio Commission is familiar, that competitive carriers do not have an obligation to serve, as do incumbent providers.

effort" become available for other purposes. The 2007 Recommended Decision takes advantage of this, by proposing segregated funding mechanisms, as discussed below.

B. Segregated Funding

The 2007 Recommended Decision features three separate funds. The three funds - Broadband Fund, Mobility Fund and Provider of Last Resort (POLR) Fund - would be separate, with distinct budgets and purposes. This approach offers benefits to providers of existing and emerging technologies, and to the public. As the Ohio Commission noted in its earlier comments, separating the funds and funding processes allows for the funds to develop and change as needed with far more flexibility.

The Ohio Commission recommends, as it has stated elsewhere in this proceeding,[17] that the support from each of the funds be awarded to only one provider in any given area. However, in order to allow for the funds to be used efficiently, taking advantages of economies of scope, a provider should be able to collect from more than one fund, should it either be chosen via a reverse auction, or otherwise selected[18].

As is stated in the 2007 Recommended Decision, the three funds

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[17] *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-22, Comments of the Public Utilities Commission of Ohio Regarding Reverse Auctions, Filed April 17, 2007 (Ohio Commission Reverse Auction Comments) at Page 4 - Section B.

[18] As is discussed in the Ohio Commission Reverse Auction Comments, while the Ohio Commission believes that Reverse Auctions may have many advantages if structured properly, the use of costing methods may be an important fallback in the event that there are insufficient bidders (or only one) for a given area.

should be funded by eliminating duplication and waste in the existing High-Cost Fund, not by generating new or increased funding demands to be placed upon consumers. In short, USF contributions from consumers should not be increased. Increasing contributions from consumers is counter to the USF goal of affordable telecommunications services. The foundation for Section 254 is affordable telecommunications services for all, not merely affordable communications services for those living in rural and high-cost areas. The goal should be to make better use of the existing funding, rather than to create increased demand upon the consumers who must pay universal service contributions. The 2007 Recommended Decision recognizes this.

Many States have granted CETC status to wireless companies. To the extent that this has actually resulted in either the provision of wireless services where there was inadequate service, or the provision of service where none was available regardless of technology, those carriers would be able to avail themselves of the Mobility Fund (in the former case) or the POLR Fund (in the latter case).

The Ohio Commission agrees with the proposal in the 2007 Recommended Decision to revise the list of USF supported services to explicitly include Broadband and Mobility services under Section 254, given the structural separation the Joint Board has recommended. Adding these services comports with the public demand for these services, and supports safety and public service needs in unserved and underserved areas.

C. POLR Fund

The Ohio Commission concurs with the joint Board that there should be little change in the mechanisms of support for the ILECs who would be the recipients of the Provider of Last Resort Funding. However, costing information should be periodically updated to consider all costs such as loop costs, switching costs and transport costs. The competitive local providers are dependent on the ILEC for backhaul and interconnection, so, indirectly, the POLR Fund functionally supports competition by helping to ensure that the facilities on which the competitors depend are in place and adequate. However, since funds are currently (and are expected to continue to be) distributed based on lines served, each line that is lost to a competitor reduces the support available to the POLR recipient. Due to line loss to the competitors there should be either an adjustment factor included in the support to ILECs to reflect the effects of competition, or a periodic updating of the statistics underlying the support calculation. The advantage of periodic updating is that it will account for both line loss and line "regaining". Where an ILEC carries the POLR obligation, the ILEC should be preserved as the recipient of POLR funding since competitive wireline and wireless carriers are dependant upon the ILECs existence.[19]

[19] While this is not a condition that exists in Ohio, there are instances in other states where no ILEC exists, simply because when the term was created there was no provider in the area to be "incumbent". In many of these instances, service is now being provided, and not always by a wireline provider. In these cases, such a provider is a "functional incumbent" and should have access to the POLR fund, provided that they accept the POLR obligation

Furthermore, some high-cost loop support functionally operates to further the broadband network, since the High Cost Loop fund supports the capital costs of providing loop facilities for many rural carriers. Many of these loops are broadband capable. This essential network should be maintained through the POLR, while the Broadband Fund is available to assist with whatever incremental costs there may be in providing broadband service over these loops.

D. Broadband Fund

Ohio applauds the formation of a Broadband Fund for the advancement, availability and expansion of broadband services. Ohio has already begun its own initiative towards the goal set out for the Broadband Fund proposal. On December 17, 2007, Governor Ted Strickland launched Connect Ohio, a public-private partnership that will help expand broadband services across the state by working with local communities and providers to map gaps in broadband access, and address them. With this program already in place, Ohio would be better able to identify the unserved and underserved areas within the state.

The Ohio Commission supports the concept that all states would be entitled to a base funding level, as some states may not be financially able to provide matching funds, at least initially. The development of state-sponsored funding mechanisms takes time. However, states, through their

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for a service area.

own commitment and investment initiatives, such as Connect Ohio, should be allowed to obtain some level of matching funds under the 2007 Recommended Decision.

Many states do have their own fund for universal service, however states such as Ohio, which do not have a separate state Universal Service fund, can still provide Broadband funding and thus have an opportunity to obtain matching funds. Whether or not a state-sponsored initiative or support fund is called a Universal Service Fund should not be the determining factor of whether that initiative or fund qualifies as a "State matching fund". Regardless of the name, or method, the matching funds facilitate the success of the broadband goals and programs which the Broadband Fund is intended to support.

E. Universal Service Obligations

As we stated in our Reply Comments[20], the Ohio Commission believes that any ETC receiving USF High-Cost funding (or indeed any USF funding) should be required to provide service to any and all customers who request it in a given service area. Whatever the service area is, the bidding ETC would be required to commit to make service available to all customers throughout that area under the same rates, terms and conditions. When making its bid for an area, the bidding ETC would presumably take that requirement into account. The winning bidder would then be presumably the most efficient

[20] Ohio July, 2007 Reply Comments at 10.

provider for that service area, consistent with those terms and conditions.[21]

F. ETC Designation

The Ohio Commission agrees with the Joint Board recommendation that States should retain authority to designate a carrier as an ETC, as they are best suited to make that decision based on the particular geography, population, economy, and telecommunication needs of their own state. Again, states should continue to certify carriers eligible for high-cost support and attest that the support is being used consistent with Section 254(e). Additionally, each state is in the best position to determine and identify areas within that state that are unserved or underserved and recommend Broadband and/or Mobility Fund support for those areas. With state oversight, within the structure of the 2007 Recommended Decision, using the USF funds to subsidize inefficient competition or the construction of duplicate networks could be avoided.

G. Mobility Fund

As a general statement, the Ohio Commission concurs with the Joint Board's stated goals of achieving universal availability of wired and wireless voice and broadband services as well as maintaining affordable and comparable rates for all rural and non-rural areas. As with most things, the "devil is in the details".

[21] This is discussed further in the Ohio Commission Reverse Auction comments. However, it is sufficient to say here that the Ohio Commission believes that a commitment to provide service universally in a given area should be a bidding requirement.

As has already been stated elsewhere in these comments, and in the Ohio Commission's other comments in this docket, many of the issues currently bedeviling the high-cost fund could be avoided by requiring the recipient of universal service funds to provide universal service, or at least make progress in that direction. To that end, some requirement to achieve, and accountability for, universal service availability[22] should be imposed on wireless carriers receiving support from the Mobility Fund. Here again, the States are well placed to both understand the need for Mobility Fund supported services, and track the development on an ongoing basis.

H. Transition Period

The Ohio Commission concurs with Joint Board that during the transition period to the new High-Cost support structure current support for all five mechanisms[23] be capped at the 2007 levels. While this may create some constraints on the amount of support available and the initial progress to be made, the transition will be quite complicated under the best of circumstances; having a "moving target" of the total fund amounts may well make a difficult transition chaotic. For the moment, there appears to be sufficient funding available for the foreseeable future under the Joint Board's recommended structure.

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[22] This is not to say that the service availability requirements should in all instances be identical. As noted elsewhere, different states have different situations that they face in terms of universal service.

[23] 1) High Cost Loop; 2) Local Switching; 3) Interstate Common Line; 4) Interstate Access; and 5) High Cost Model.

CONCLUSION

The Ohio Commission is extremely encouraged by the 2007 Recommended Decision. The 2007 Recommended Decision forms a foundation for an efficient, equitable return to the original goals of the High-Cost Fund, while at the same time expanding the breadth of those goals by taking into account the additional services that now exist, and are increasingly in demand. That demand is not merely a matter of consumer desire; it is a matter of economic necessity.

The Ohio Commission's comments in these dockets have emphasized the need for balance, accountability and sustainability in the USF. The Ohio Commission believes that the 2007 Recommended Decision, with the implementation of the refinements noted in this current round of comments, will achieve those three goals. In addition, the 2007 Recommended Decision successfully recasts the High-Cost Fund to both respect its historical purpose and provide a basis for the future.

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